IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

AS.No. 581 of 1994()

OS.462/1988 of I ADDL.SUB COURT, ERNAKULAM
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APPELLANTS/PLAINTIFFS:
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1. V.G.PETER, SON OF LATE GEORGE, VAZHAPPILLIL HOUSE, POWER HOUSE ROAD, TRIKKANARVATTOM DESOM, ERNAKULAM VILLAGE, KANAYANNOOR TALUK COCHI 682 018

2. V.G.SOLOMON, SON OF LATE GEORGE OF DO.

BY ADV. SRI.A.K.CHINNAN

RESPONDENTS/DEFENDANTS:
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1. THE CENTRAL BANK OF INDIA, REPRESENTED BY THE GENERAL MANAGER, CHANDAR MUGHI, 16TH FLOOR, NARIMAN POINT BOMBAY 400 001

2. V.G.MATHEW, SON OF LATE GEORGE VAZHAPPILLIL, POWER HOUSE ROAD, COCHIN 682 018

3. CHARLOTTE PAUL, D/O.LATE GEORGE, VAZHAPPILLIL, RESIDING AT DOOR NO.C.48 ONGC QUARTERS BADARGHAT, AGARTHALA 799 014

4. V.G.ANTONY, S/O.LATE GEORGE VAZHAPPILLIL, POWER HOUSE ROAD, COCHIN 682 018

5. V.G.MARGRET, DAUGHTER OF LATE GEORGE OF DO.

6. JULIET GEORGE, DAUGHTER OF DO.

7. V.G.PAUL, S/O. LATE GEORGE OF DO.

BY ADV. SRI.THOMAS MATHEW
SRI.ANTONY DOMINIC
SRI.A.M.SHAFFIQUE

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 05/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & A.K.BASHEER,JJ.

A.S.No.581 of 1994

Dated this the 5th day of January, 2007

JUDGMENT

Kurian Joseph,J.

This appeal is at the instance of the plaintiffs in O.S.No.462/1988 on the file of the 1st Additional Sub Judge, Ernakulam. Plaintiffs and defendants 2 to 7 are the children of late V.M.George. Sri.George was placed under suspension while working under the first respondent, on 15-10-1975. Disciplinary proceedings followed culminating in the discharge from service of Sri.George by order dated 10-2-1977, which, according to the plaintiffs, was communicated to George only on 4-3-1977. Sri.George would have otherwise superannuated from service on 22-2-1977. Hence according to the plaintiff there is no termination of service in the eye of law and the plaintiffs are entitled to get the entire service benefits as if Sri.George continued in service and superannuated on 22-2-1977. The suit was resisted by the Bank on various grounds, particularly on the ground of limitation. The Bank also took a stand that Sri.George had pursued his grievances before the

authorities under the Bank itself and having exhausted all the available remedies the plaintiffs cannot challenge the legality of the disciplinary action. The following issues were framed by the trial court:-

> "1. Whether the suit is barred by limitation?
>
> 2. Whether termination of the services of Sri.George (late) was done illegally or in violation of the principles of natural justice?
>
> 3. Whether the order of the appellants and Revisional Authorities are vitiated?
>
> 4. Whether any service benefits were due to Sri.George, and if so, what is the quantum?
>
> 5. Whether the plaintiffs are entitled for any compensation and if so, what is the quantum?
>
> 6. Reliefs and costs?"

On issue No.1 regarding the question of limitation, it was held that the superannuation date being 22-2-1977, the suit filed on 16-12-1986 was barred by limitation. We are afraid the trial court has not properly appreciated the impact of Section 6 of the Limitation Act. The plaintiffs were 19 and 17 respectively as on the date of filing the suit in 1986. If that be so, limitation is saved as far as the plaintiffs are

concerned since the plaintiffs were under legal disability to file the suit within the prescribed period. On the rest of the issues, the trial court held that the legal representatives have no right to challenge the disciplinary proceedings. Reliance is placed on Ext.B9 judgment in O.P.No.6363/1981. It is seen from the judgment that this court has made it clear that nothing stated in the judgment would disentitle the legal representatives of Sri.George from agitating the rights, if any, before the civil court. According to the learned counsel for the appellants, there being no discharge in the eye of law since the order of discharge is served on the employee after the superannuation, the appellants are entitled to succeed. However, it is the contention of the learned counsel appearing for the Bank that the discharge is only the continuation and culmination of the disciplinary action already initiated while Sri.George was in service. Since the trial court has erred on the first issue of limitation, we are of the view that it is only appropriate that the matter is remitted to the trial court with a direction to dispose of the same in accordance with law expeditiously.

2. We set aside the judgment and decree in O.S.No.462/1988 on

the file of the I Additional Sub Court, Ernakulam. The suit is remanded to the court with a direction to dispose of the same within a period of four months from the date of receipt of the records. We make it clear that our judgment is rested only on the question of limitation and the other contentions of the parties are left open. The parties will appear before the trial court on 12-3-2007.

(KURIAN JOSEPH, JUDGE)

(A.K.BASHEER, JUDGE)

ahg.

KURIAN JOSEPH &
A.K.BASHEER, JJ.

A.S.NO.581/1994

JUDGMENT

5th January, 2007